

COMMITTEE ON THE IMPACT OF DOMESTIC VIOLENCE AND THE COURTS

Meeting Minutes

April 16, 2003

10:00 AM – 2:00 PM

State Courts Building

Conference Room 119

Phoenix, AZ

CIDVC Members Present

Hon. Karen O'Connor, Chair
Hon. Chris Wotruba, Vice Chair
Jerry Bernstein, Esq.
Lt. Mark Carpenter
Hon. Sherry Geisler
Martha Fraser Harmon
Hon. Dana Hendrix
Donna Irwin
Bob James
Hon. Ronald Karp
Patricia Klahr
Sheri Lauritano, Esq.
Hon. Mary Helen Maley
Hon. Mark Moran
Dr. Anu Partap
John Pombier, Esq.
Tracey Wilkinson

Members using a Proxy

Dr. Teresa Lanier
Robert M. Lehner

Members RSVP (unable to attend)

Margaret Bentzen
Allie Bones
Hallie Bonger-White, Esq.
Hon. Denise Lundin

Guests

Theresa Barrett, Court Services, AOC
Karen Kretschman, Court Services, AOC
Robert Roll, Information Technology
Division, AOC
Amy Wood, Court Services, AOC
Nicole Winiki, AzCADV

Members participating by Telephone

Hon. George Anagnost

Staff Present

Catherine Drezak
Chris Claxton

Quorum: Yes

1. Call Meeting to Order: Judge O'Connor

The meeting was called to order at 10:15 AM. All those persons present introduced themselves. Guests attending the meeting were welcomed.

2. Review of Previous Meeting Minutes: Judge O'Connor

Minutes of the February 19, 2003 meeting were reviewed and no additions or corrections were offered.

Motion: Approve February 19, 2003 as presented.
Vote: Pass
Tasks: Update web page

3. Workgroup Reports: Workgroup Chairs

A. DV Forms Workgroup Report: Mr. Bob James - Vote Item

DV forms

These forms are the culmination of months of work by the DV Forms Workgroup. This group has a lot of drive and determination to improve the documents. The most fundamental shift is the “no contact” paragraph. Everything is prohibited and exceptions are made to allow limited contact. Currently specific restrictions have to be made and some defendants find ways around the restriction. This change is more enforceable and easier for judges to write. It may result in fewer key strokes if done electronically and less writing if done manually. All five of the documents will be reviewed to get input and ultimately approval from the committee. One goal was to design a set of products that are relevant and sufficient for the typical situation, and to provide the jurisdictions with the flexibility to deal with those situations that are not “typical” Notice there are no numbers. It’s a designed form for two scenarios, 1) dynamic type for computer generated and 2) hand written. Dynamic means that only the parts which are ordered show on the order. These forms have been presented at the Superior Courts Users Group and the Maricopa County Presiding Judges meetings. The following is a summary of the discussion:

GUIDE SHEET

This sheet definitely represents a change in process for many jurisdictions. The guide sheet informs the petitioner, but does not convolute the petition. As a separate document, it is used in every case and allows the petitioner to fill in the defendant’s descriptor information. In a manual court, this provides information that staff can put onto the Order of Protection. Technically, there are two pages including the guide. However, the guide does not get served. It is kept at the court and not copied for the Plaintiff. The Judicial officer is not dealing with the guide, just the information needed to decide the case.

CIDVC’s recommendations:

Children are usually not included on the guideline, but the guideline should show whether there is potential harm to the child, impact on the child, observing a parent being abused, if the defendant commits a violent crime, harms pets, etc., then children should be included.

The committee questioned whether Driver’s License information should be put on the guide and why leave it off military, currently in law enforcement indicators. Do you want this on the Order of Protection?

Counseling - Put additional instruction verbiage on guide.

People don't realize that the petition will be served on the defendant. We need to let the Plaintiff know it is on the guide, possibly bold and /or strengthen verbiage. Also add, "and future judicial proceedings." If they modify the reasons for wanting the petition from the original, it's a "bad thing".

PETITION:

The Workgroup took all three petitions for protection and revised them into a single pleading. This petition document is pared down to basic elements of information the judge needs to make a decision on the case. The Plaintiff can check the type of protection requested, define the relationship, explain the need for protection and check the requested reliefs. Once the word phrasing is approved, the Workgroup will develop a second set of documents to comply with Rule 10D for Superior Courts.

This will make the petition two pages long. Adjustments will be made to add writing space for filling in the blanks.

CIDVC's recommendations:

There is not enough space, while admirably done, it is too condensed. The model should contain enough space to get the job done and provide people enough space to include enough information to convey their meaning. The model should represent the proper format including proper spacing. Bob J. assured the committee that the Workgroup will do everything they can to increase the space on the forms to provide enough room for the petitioner to give clear and coherent information in a format that makes sense.

#2 needs room to add case information, ask if either party arrested. The Plaintiff may not remember all of the information, but they do remember some facts.

Paragraph two could perhaps mislead the plaintiff by stating that the plaintiff cannot discuss matters involving children and parental relationships. At the end of the guide, the Workgroup should add a statement saying that you can still ask the court to include the child in the Order of Protection.

#3 needs more column space for description and add: "You may continue on additional paper." It gives "permission" to the plaintiff to provide as much information necessary to plead the case. The Petition needs to include all of the story which forms the basis for the order. The defendant deserves to get all of the information, not just what can be squeezed into a couple of lines. Otherwise, it defeats the intent of an ex parte hearing

#4 add another line for protected parties; the Plaintiff usually needs to include three or four parties.

#5 need more space, cannot get a complete address in the space allotted.

Keep #7 line in petition, if the Plaintiff asks for counseling at an ex parte hearing, the judge cannot order it. Instead the judge will not grant the Order of Protection and schedule a hearing before granting an order. This can be confusing to the victim, and there is concern that the victim has to face the defendant at the hearing. The Workgroup needs examples of this occurring .

Action: Tracey W. and Patricia K. will work on the wording. Tracey W. will provide examples.

The workgroup needs to "beef up" and clarify on the documents that the Plaintiff doesn't have to list his/her address if he/she wants it protected.

Attest - It may also need the judge's signature and court clerk line.

ORDER OF PROTECTION:

The Workgroup believes this order reflects a professional, legal document. Changes include format, content and logic. A second set of forms for use by Superior courts will be developed to conform to Rule 10D to address concerns about margins. The Workgroup incorporated changes from last CIDVC meeting. The previous Order of Protection has no restrictions against contact with other protected parties. It now mirrors the language in the Plaintiff paragraph to allow restrictions. Counseling is considered an option on the order since it is not used in most orders, as these cases are ex parte. The logic is to have it included in the other Orders section.

CIDVC's Recommendations:

The middle section of the heading, "being arrested and prosecuted for crimes" needs to be changed.

Paragraph 4 on the Petition has Date of Birth for Other Parties, but it's not on the Order of Protection. This is because it's not necessary for the order. It's needed for NCIC and captured on the petition. It should be entered into the repository and not transferred to the Order. This will minimize the amount of personal information provided to the defendant,

Superior Court Clerks asked for a line for Court Reporter, whether the witness was sworn and room for the Deputy Clerk's name on the Superior Court version of the order. It is inappropriate for this order. A minute entry is generated for these purposes

Action: Staff: Investigate why they want this information on the order.

The language is different for protected persons, "no direct or indirect contact." There is no reason why it's not in there. Contact is only allowed "as checked". It needs to be specific because the defendant will look for any little loophole. Perhaps insert "no contact... and any protected persons". This is a problem in cases where children are involved. You have to keep it separate.

IAH:

The top right corner was changed to indicate a dating relationship - so law enforcement does not charge for service. A quick reference for process servers. The defendant description is out, notice the language mirrors the Order of Protection.

CIDVC's Recommendations:

Punctuation problem - "Injunction" should be capitalized.

IAWH

There were no major changes.

It was suggested that the Workgroup present the forms as a "healthy draft" and request input.

AZTEC/IT Impact: Amy Wood and Robert Roll

The presentation was divided into two sections, the Automation impact and the AZTEC impact.

AUTOMATION IMPACT:

The major impact is the reversed logic from "do not do something" to "do not do anything, except." This poses a challenge to the automation segment. A secondary problem is the systems will be

required to maintain and support the two versions of the forms until the transition is completed in all courts. Several systems will be affected beside the AZTEC system, such as: revision of the printed form format, removal of some data fields, adding other data fields on both the screens, and the printouts, (such as "Civil Standby"). CPOR and data warehouse will require changes and insure the PCO codes will match and transfer over to the DPS system.

High level estimates are needed for the conversion based on the proposed forms. From the AZTEC side, it will take 200 hours of programming changes, including screen updates, database modification, form printing capability. CPOR and data warehouse are more flexible and built to accept input from various types of systems. About 100 hours of reprogramming time is needed to insure the Repository will accept data from both types of forms and the new type of data coming into the warehouse.

Non-ACAP systems have their own systems which require their own programmers and/or contracted consultants. These include: Maricopa Superior Court, Gilbert Municipal Court, Paradise Valley. They too will have to maintain and support the use of both the old and the new forms within their systems. They will also be required to reconfigure their systems to meet the new specifications. No timetable exists for non-ACAP conversion. This will depend on the type of system they have, how it was programmed and their resources. An email was sent out to several of these courts to get estimates and the impact on their systems by converting to these forms. During and after programing, there will need to be close coordination with law enforcement to ensure that they account for the differences. CPOR for example, when it goes live, will allow DPS to see the data information at their terminals. They will have to be notified that the data could be in either the old or the new form. Coordination with the non-ACAP courts and AOC will take about 80 hours. This includes planning the changes and analysis of how the new data will be sent to us.

AZTEC IMPACT

There are currently 182 courts statewide 145 courts are on the AZTEC system. The balance around the state will have to work on the impact of the forms implementation on their own. There will be a lengthy implementation period on the AZTEC system. AZTEC programming comes first, then training for the Aztec screens. We have yet to hear about the non-ACAP time table. It will be based on the number of people available to reprogram and train. A number of issues that have been brought up by others include the tension between manual vs automated use of the forms and PCO codes. This leads to questions of whether we should focus on getting data into the system first and then make use of the data and reprinting costs to reproduce new forms. As we go through the committees, we will make it clear that if the forms are approved, there will not be an immediate implementation because there are a number of steps that have to be taken first before the forms are released for use by the courts.

Implementation testing for AZTEC will be about 400 hours, thus will include going through the screens, print outs, and maintaining the integrity of the old orders. Testing CPOR will need 60 hours of additional programming time. Training on the new AZTEC system will take 360 hours, primarily due to the change in the logic and familiarization on the data entry changes. There will be some training for law enforcement on the logic change. Training by non-ACAP courts on their system requirements is undetermined at this time. Both ACAP and non-ACAP projects can be done simultaneously. Repository and warehouse can be done parallel also because we know the structure and elements we will be getting. The gross estimate to complete the Aztec training and testing is roughly \$40,000.

Motion: Bob James: "I move that CIDVC approve the concepts of the presented documents and allow members of the DV Forms Workgroup to present those concepts to relevant court committees with the endorsement of the CIDVC."

Vote: Pass

Note on dissenting opinion:

One of the primary purposes of this data warehouse concept is to create a repository of a variety of elements, yet the current proposal seems to have truncated that effort. This is particularly relevant since not all courts will have the same demographics or issues. A complete and accurate data set requires the participation of all courts. This would be an obvious necessity for allocation of funds and resources. To exclude data from the inception of the warehouse threatens the integrity of the data collected, as well as its future application. An initial inclusivity may always be later adjusted when trends support those changes. Without this critical inclusivity, the initial purpose of the data warehouse seems statistically drastically compromised. If other courts (i.e. Superior Courts) are unwilling to use the proposed form, should not time be spent addressing those concerns first?

Finally I firmly believe that the military issues must be properly addressed, as the DV topic is very pertinent on US military installations. Given our community relationship to active and reserve military personnel, these are critical issues on base, especially for those in law enforcement. USAF sources have already indicated a growing need in this area to address DV issues. In light of these critical issues, I cannot support the DV form as currently proposed, and therefore cast a vote against its use.

Tasks: Schedule as agenda item on committees

B. DV Education Workgroup Report: Judge Moran

A number of committee members are donating time at the Judicial Conference on June 19, 2003. The morning session will be presenting DV Education. It is a three fold concept 1) Children and DV, 2) Accountability Lethality and Evaluation, and 3) Round Table on Current DV Issues. The workgroup specifically will try to present information other than information on Orders of Protection and get issues that are on hot topics around the nation. DV and children is one of the hottest. Materials on DV that Limited judges currently get were offered to the committee for review. Topics that will be covered include: Data information, Safety issues, Custody and Visitation, practical issues and advice for crafting orders, what judges need to look for, and how to reduce trauma.

Dr. Partap's group really thought about the relevant issues to the group and present information they can take away. Dr. Partap and Dr. Lanier will be co-presenting to speak both as physicians and to relate experiences they had have with victims of DV. Sid Buckman, who works with child custody evaluations in Coconino County, will also be presenting. He is very bright, informative, and provides good presentations. His side will provide a neutral party to bounce ideas off as well as providing information on what evaluators look for and the issues they deal with in evaluations so that judges can prepare for that aspect of domestic relations cases.

The Batterers' intervention program sessions include: abuser accountability, lethality assessment, crafting orders, evaluation and recommendations, custody & visitation, "in camera," and civil issues. We have professionals in this area to provide their insight and expertise. It is intended to

give judges the concepts of the programs available and what judges need to be looking for when sentencing an offender to DV counseling, including lethality assessments, custody and requests by attorneys for the judge to interview children caught in the middle of a custody dispute. This is a volatile situation not just from a legal standpoint, but from the child's perspective.

Round table includes: Firearms, Failure to protect, Legislative update, Probation & budget and Allegations. Participants will also get feedback from the first two sessions regarding any issues brought up at the conference. Judge Moran will be the moderator. We will be providing practical materials for participants to take with them. The workgroup will have a couple of meetings to finalize the materials and presentations.

There was a request that the training team and materials be used to train the DR committee. They are discussing important issues regarding child and DR that will impact victims and their children in Arizona. Areas of great concern need the input by CIDVC. **There was a request that the Chair ask to be placed on the DRC agenda for a educational presentation on children and child custody.**

C. Criminal Benchbook Workgroup Report: Judge Moran- Vote Item

Judge Moran presented the proposed DV Criminal Bench book which is published on the web and available on the web site. Some had a problem providing feedback on the site. The Workgroup did a lot of work on this document. Please review it.

CIDVC's recommendation:

Incorporate part of the Appendix G into portions of Offender treatment area of the main document; specifically in Chapter X Sentencing, Section F: Sanctions. A couple of things would be possible to incorporate into the Counseling section, specially the number of weeks (26) recommended and encouraging the judges to collaborate with the offender treatment counselors or probation officer. The group which formulated the recommendations have the information on the offender and best possible sanctions and can advise the judge. Recommendations are based on research.

#8 of recommendations: There are currently no official guidelines on length of treatment by the Department of Behavioral Health (DBH). Also there is very little connection between judges and service providers. In passing, the recommendations CIDVC gave approval of the length of treatment time. It could conflict with contracts between cities and contracted providers in which the provider is given the discretion on the length of treatment needed. This is a recommendation to give judges an idea of appropriate treatment times.

Sanctions for non-compliance for offenders who do not show up for treatment: The Bench Book has a section on probation revocation and how to handle those cases. There is no section regarding orders to show cause after the fact for compliance problems. This is short of probation revocation and for those jurisdiction which do not have probation, sort of like a contempt chapter on how to deal with a defendant who has not complied with court orders. There is one in the Regular Criminal Bench book, but it is not tailored to DV. A chapter can be developed.

Section on Evidence (evidence based prosecution), p32, discusses rule 804 exceptions, but nothing on rule 803 exceptions. The majority of time you will use 803 exception rather than 804, particularly regarding excited utterance, present sense impression, and confrontation clause. The

Workgroup needs to include 803 section, check D. It needs more case law, and to expand this section.

Task: Sheri Lauritano send 803 info to Catherine Drezak: Diversion not accurate, Chapter 10, p. 38 sounds like the judge is required to send the offender into a counseling program. Statute doesn't require this much, and the law does not require anything regarding counseling. Rewrite into paragraph to highlight eligibility. There needs to be the discussion on waiver (victim invite) OP section. Defense teams use the fact that the victim invited the defendant to violate the order. It is the number one defense for a defendant violation. This needs to be added to the Bench Book but try to maintain neutral language which is consistent with the DV forms.

Task: John Pombier: Send info to Catherine: In Death penalty cases the victim has the right to address the court at time of sentencing. The victim shall not be treated as a witness and cannot be cross examined as a witness regarding request for restitution. Since there is often a restitution hearing conducted at the time of sentencing, the judge will have to separate the two hearings. Otherwise the judge cannot ask the victim about the basis for the restitution costs.

P.9 Medical records: HIPPA requirements met? Preemption argument of Fed over State. Will look at **Task: Judge Moran**

New case: A Court held that plea agreement was tantamount to a contract, e.g. 10 days jail time, but 9 days suspended upon completion of counseling. If defendant fails to complete counseling, then the judge is required to order the defendant to complete jail time. Include this in the Bench Book, perhaps in the Chapter on Contempt.

Task: John P. email to Catherine Drezak. Catherine Drezak will email to CIDVC. Committee can review.

P9-1: The statement of belief of impending death is incorrect. These statements can be used in a variety of ways.

Task: Jerry B. will rewrite.

P9-2. Aggravated offenses. Rewrite to comply with 13-2921.01.

Task: John P. volunteered to get information to Judge Moran.

Section aggravated/mitigation: If children are present, the prosecutor has a charging decision to make a charge more serious. True at felony level, but not misdemeanor level. Make a distinction in Bench Book. It is an aggravated in sentencing, not charge a more serious offence.

Criminal Benchbook Workgroup: Look at it.

P9-14 rules of evidence. Remove "present a winning case"; "if victim recant.....can use expert to show statement...." Actually it is up to the jury.

Motion: None

Vote: None

Tasks: Defer vote on Bench Book until next meeting. Committee look at web site read and prepare.

D. CPOR Policy Issue: Judge Moran- Vote Item

1) Access to Unserved Orders CPOR- access to law enforcement of Order of Protection data.

Motion: Judge Moran: I move that CIDVC vote to approve the recommendation to allow law enforcement officers access to unserved protection order information.

Vote: Pass

Tasks: Staff refer to Dave Byers.

E. DV Benchbook Report: Judge Moran- Vote Item

Education Services (ES) made three requests: 1) renaming their two Benchbooks to Manuals; 2) reformatting the style to present a uniform appearance and 3) make the update schedule the same time frame as Education Services. Ed. Svs. has a different style for a “manual” and bench book” and their point is that the CIDVC Bench book is closer in appearance to a manual than a Bench Book. A Bench Book is more terse, names the issue, indicating the statutes, types of services available, burden of proof, and provides a script. Ed. Svs. would like the formatting for these types of books to be uniform in appearance. They suggest renaming the DV Bench Book to DV Manual and DV Criminal Bench Book to DV Criminal Manual. All will be available on the internet web site entitles “Benchbooks”. Ed. Svs. is not interested in changing content, but are interested in getting the Bench Book on ES update schedule for December publication. CIDVC accepted the update time-line schedule.

CIDVC members don’t want to change the names of their two products. In particular, the judicial officers members feel that “manual” is somehow “less than” and not as important as the term “benchbook.” They believe a manual gets put on a shelf and is not used on a daily basis. A bench book is something they keep on their bench and use continually, and that is how they view their two bench books. They are also concerned about the amount of training it would take to re-educate and reinforce the use of these materials if they were changed to “manuals”. The committee agrees to the update/revision schedule as updates are not a problem. But on the benchbook issue, the point that all of these products will be maintained on the intranet on the “Bench book and Manual” page, they felt buttressed their position. The DV Bench book will be published on the web and on a CD Rom for distribution.

Motion: None

Vote: None

Tasks: **Defer vote on acceptance until June agenda #1 item**

4. Meeting Business: Judge O’Connor

Karen went through minutes and discovered several items remaining unresolved.

A. Unfinished issues: Judge O’Connor

1) Renaming DV Benchbook -

Discussed in DV Benchbook section.

2) Committee on workplace violence-

CIDVC volunteered to do the form to ensure consistency and got stuck with the issues and questions on the statue. A letter from Judge Moran requesting the issue be moved to Human Resources was found. Copy the letter and follow it up but do not revive.

3) Regional Practice Discrepancies-

This is the victim turn away issue highlighted by some instances occurring in Pima County. While the Bench Book allows transfer within one mile to assist in workload issues, sometimes courts will use this exception to divert cases to another court. No new related issues were brought to the committee. Members are to check their counties to see if this is occurring and report back to CIDVC. AzCADV will check with presiding judges /clerks /advocates in Pima and ask if this is still an issue. Bring it up as a report at a later meeting. Perhaps training has been effective. Also use of video technology may have reduced this problem.

4) DV Quarterly-

Committee agreed last year to develop an informational newsletter to educate judges and one issue was published. It is a very labor intensive undertaking. It was designed to appeal to judges by providing changes to statutes, new case law and education scenarios. Although judges get lots of DV info every month, nothing out there is specifically targeted to the judges. Get a copy to members. Poll judges at conference to get feedback. The committee still interested in doing it.

5) Definition of "material injury"-

Meeting time elapsed, remaining matters will be on the June agenda.

6) Spanish forms for the Web issue-

Meeting time elapsed, remaining matters will be on the June agenda

7) Ethics opinion-

Meeting time elapsed, remaining matters will be on the June agenda.

8) Service of Orders of Protection-

Meeting time elapsed, remaining matters will be on the June agenda.

9) Brady issues (some courts won't remove)-who is going to do what?-

Meeting time elapsed, remaining matters will be on the June agenda.

B. Lunch-flat \$10 or pro rata of the total cost?

Meeting time elapsed, remaining matters will be on the June agenda.

5. Old Business: Judge O'Connor

A. AO 98-66 conversion to AJCA 5-209

Meeting time elapsed, remaining matters will be on the June agenda.

6. New Business: Judge O'Connor None submitted

Walk for DV. Please sign up or volunteer. Patricia has sign up brochures. John P. will be running and has a team.

7. Call to the Public: Public Attending

None brought forward by public attending.

Judge O'Connor announced that she will resign as Chair of the Committee. A scheduled assignment rotation will take her off the Family Court bench and move her to the Criminal bench. Anyone interested in applying for the Chair position please contact Catherine Drezak at (602) 542-9607.

8. Next Meeting: June 19, 2003, 1:30-4:30, Chaparral Room, Doubletree-Scottsdale Paradise Valley Resort, 5401 N. Scottsdale Rd., Scottsdale, Arizona 85250, Phoenix

9. Adjournment: Judge O'Connor

The meeting adjourned at 2:00PM.

DRAFT